

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY FRANZ, et al.,

Plaintiffs,

v.

Case No: 21-cv-12871
Hon. Mark A. Goldsmith
Mag. Anthony P. Patti

OXFORD COMMUNITY SCHOOL
DISTRICT, et al.,

Defendants.

**PLAINTIFFS' JOINT STATEMENT REGARDING FUTURE
PROCEEDINGS**

On May 16, 2023, this Honorable Court issued an Order directing the parties to file “a joint statement setting forth their points of agreement and disagreement as to (i) what future proceedings are required, (ii) what schedule should be established or how any existing schedule should be modified, and (iii) to what extent phases, dates, or proceedings should be coordinated as to all Oxford Cases.” Franz et al., ECF No. 143.

In order to effectuate this Court’s Order, counsel for Plaintiff Ossege, Deborah Gordon, contacted Defendants as follows: On May 16, 2023, Gordon emailed Defendants requesting to set up a call on Friday May 19th to discuss this Court’s May 16th Order. **Exhibit A**, Emails to Defense counsel. On May 17, 2023, Gordon informed Defendants that Plaintiffs’ counsel were meeting as a group on May 24th at 4:00 p.m. and requested that Defendants provide their position on the issues posed by

the Court prior to the meeting so the group could discuss. *Id.* Having met on May 19th, on May 21, 2023, Gordon sent Defendants Plaintiffs' position as to the Joint Statement and requested their input. *Id.* As of May 23, 2023 at 12:45 p.m. there was no response of any kind to any of the communications from Plaintiffs. In light of Defendants' lack of cooperation, the below reflects the position of the Plaintiffs, jointly.

I. What future proceedings are required?

On May 12, 2023, this Court issued its Order granting in part and denying in part Defendants' Motion for Judgment on the Pleadings. Franz et al., ECF No. 142. Plaintiffs retain viable claims under 42 U.S.C. § 1983 against Defendants Hopkins, Ejak and Oxford Community Schools, and are entitled to discovery as to those theories which were not rejected by the Court. Defendants have not moved for a stay of discovery, nor are they entitled to one as a matter of law. Thus, Plaintiffs agree that the Oxford Cases should proceed to discovery.

Plaintiffs further agree that discovery should be bifurcated into two phases: liability and damages. The first phase—liability—should proceed pursuant to the proposed scheduling order set forth below, followed by dispositive motion practice. Plaintiffs agree that the second phase—damages—should commence after this Court resolves any dispositive motion practice. Bifurcation of the damages phase of discovery is most efficient for all parties, in that the Plaintiffs' testimony is unnecessary for purposes of establishing liability and is relevant only for purposes of establishing damages.

II. What schedule should be established or how any existing schedule should be modified?

On August 23, 2022, this Court entered the Case Management Order Pre-Facilitation Discovery which set forth the coordination and availability of limited discovery prior to early facilitation. Franz et al., ECF No. 82. The parties facilitated on October 28, 2022 with Kara Tertzag Lividini. Pursuant to the Pre-Facilitation Case Management Order, “[s]hould facilitation with Kara Tertzag Lividini prove to be unsuccessful, the parties agree that post-facilitation discovery will be governed by the Federal Rules of Civil Procedure and to coordinate further post-facilitation discovery pursuant to a separate order. The separate order shall then supplement and replace this Order.” *Id.* at PageID.1574. Plaintiffs agree that the Court should enter a Liability Phase Scheduling Order, which governs the proceedings through the dispositive motion deadline. Should dispositive motion practice prove to be unsuccessful, the Court should then enter a separate scheduling order regarding the Damages Phase of discovery.

Plaintiffs propose the following deadlines as to the Liability Phase of discovery:

<u>EVENT</u>	<u>DEADLINE</u>
Lay Witness Lists	90 days after entry of Post-Facilitation Scheduling Order
Close of fact discovery—liability phase	February 1, 2024
Expert Witness Disclosures	February 1, 2024
Close of Expert Witness Discovery—liability phase	April 30, 2024
Dispositive motion deadline	As set by the Court

Plaintiffs agree that Liability Discovery should be coordinated amongst the parties and governed by the Federal Rules of Civil Procedure with the following modifications:

- Bifurcation of discovery into a liability phase and a damages phase, as set forth above;
- Dates, agreed upon by the parties, for non-specified fact witness depositions will be blocked out and included in the Liability Phase Scheduling Order;
- Fact witnesses will sit for one deposition with time shared by all Plaintiffs' counsel (or designated examiner);
- Plaintiffs expressly reserve the right to take depositions pursuant to Fed. R. Civ. P. 30(b)(6) during the liability phase of discovery, including but not limited to a 30(b)(6) deposition as to insurance coverage.

III. To what extent phases, dates, or proceedings should be coordinated as to all Oxford Cases?

As set forth above, Plaintiffs agree that all discovery and future proceedings should be coordinated.

Dated: May 23, 2023

Respectfully Submitted:

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